

**UNITED STATES DEPARTMENT OF COMMERCE****Patent and Trademark Office**

Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231

AS

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
-----------------	-------------	----------------------	---------------------

09/133,886 08/13/98 JOHNSON

J 10172-9013-V

EXAMINER

IM62/0612  
KANE, DALSIMER, SULLIVAN, KURUEZ,  
LEVY, EISELE AND RICHARD, LLP  
711 THIRD AVE  
NEW YORK, NY 10017

AHMAD, N

ART UNIT	PAPER NUMBER
----------	--------------

1772

DATE MAILED:

06/12/00

7

Please find below and/or attached an Office communication concerning this application or proceeding.

**Commissioner of Patents and Trademarks**

<b>Office Action Summary</b>	Application No. <b>09/133,886</b>	Applicant(s) <b>Johnson</b>
	Examiner <b>Nasser Ahmad</b>	Group Art Unit <b>1772</b>

Responsive to communication(s) filed on Apr 12, 1999.

This action is **FINAL**.

Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire three month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

#### Disposition of Claims

Claim(s) 39-41 and 72-74 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

Claim(s) \_\_\_\_\_ is/are allowed.

Claim(s) 39-41 and 72-74 is/are rejected.

Claim(s) \_\_\_\_\_ is/are objected to.

Claims \_\_\_\_\_ are subject to restriction or election requirement.

#### Application Papers

See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

The proposed drawing correction, filed on Aug 13, 1998 is  approved  disapproved.

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. § 119

Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

All  Some\*  None of the CERTIFIED copies of the priority documents have been

received.

received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_.

Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

#### Attachment(s)

Notice of References Cited, PTO-892

Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

Interview Summary, PTO-413

Notice of Draftsperson's Patent Drawing Review, PTO-948

Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

Art Unit: 1772

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

2. (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
3. Claims 39, 41, 72 and 74 are rejected under 35 U.S.C. 102(b) as being anticipated by Ausvit (4,514,962).

Ausvit relates to a tape comprising a lip, a fold connected to said lip, an opposite wall connected to said fold and flange connected to said opposite wall. The lip has a reclosable fastener portion connected thereto at an end thereof mating to a mating fastener connected to said opposite wall. The mating fastener has said flange juxtaposed thereto and is substantially parallel to an end of said flange.

The inside surface is inherently non-sealably treated in order to contain filling material therein.

The phrase "capable of being sealed" has not been given patentable weight because it does not constitute a positive limitation art requires the ability to so perform.

4. Claims 39-41 and 72-74 are rejected under 35 U.S.C. 102(b) as being anticipated by Ausvit (4,528,224).

Art Unit: 1772

Ausvit relates to a tape comprising a lip, a fold connected to said lip, an opposite wall connected to said fold and a flange connected to said opposite wall. The lip has a reclosable fastener portion. Further, figure - 6 shows the structure without said fold.

The inside surface is inherently non-sealably treated in order to contain filling therein. Further, the method of making the surface non-sealable is not germane to the issue of patentability of the product itself.

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 39-41 and 72-74 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ausvit (4,514,962) or (4,528,224).

Ausvit '962 or '224, as discussed above, fails to expressly teach that the inside surface is treated to be non-sealable. It would have been obvious and is well known to one having ordinary skill in the art to provide non-sealable treatment to the inside surface such that said surface does not seal with other surface, thereby providing the function to hold filling material therein.

7. The substitute specification filed with preliminary amendment A on August 13, 1998 has not been entered because it contains underlined and bracketed terms and is not accompanied with

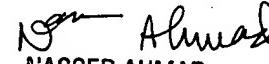
Art Unit: 1772

a clean copy of the substitute specification. Further, the amendment to the claims filed said preliminary amendment A has also not been entered failure to comply with C<sup>F</sup>AR 1.121.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nasser Ahmad whose telephone number is (703) 308-4424. The examiner can normally be reached on Monday - Thursday from 8:30 am to 6:00 pm. The examiner can also be reached on alternate Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ellis Robinson, can be reached on (703) 308-2364. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3599.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

  
NASSER AHMAD  
PRIMARY EXAMINER  
GROUP 1300  
TC-1700

Nasser Ahmad/om  
June 8, 2000